

# HOUSE BILL 811

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By: **Delegates Dumais, Conway, DeBoy, Malone, and Mathias**

Introduced and read first time: February 9, 2010

Assigned to: Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

2 **Child Abuse and Neglect – Mandatory Reporting – Children in Contact with**  
3 **Sexual Offenders**

4 FOR the purpose of requiring certain professionals to notify the local department of  
5 social services or the appropriate law enforcement agency if the professionals  
6 have reason to believe that a child is at substantial risk of child abuse or neglect  
7 because the child's parent, guardian, or caregiver allows the child to reside with  
8 or regularly associate with a certain individual; providing certain exceptions;  
9 establishing certain reporting procedures; requiring the Secretary of Human  
10 Resources to adopt certain regulations; establishing certain investigation  
11 procedures; requiring the local department to take certain actions after  
12 completion of an investigation; providing for expungement of certain reports;  
13 providing certain immunity for certain persons who make or participate in  
14 making certain reports; and generally relating to reports and investigations  
15 concerning children at substantial risk of child abuse or neglect.

16 BY adding to

17 Article – Family Law  
18 Section 5–705.2 and 5–706.2  
19 Annotated Code of Maryland  
20 (2006 Replacement Volume and 2009 Supplement)

21 BY repealing and reenacting, with amendments,

22 Article – Family Law  
23 Section 5–707(b) and 5–708  
24 Annotated Code of Maryland  
25 (2006 Replacement Volume and 2009 Supplement)

26 Preamble

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 WHEREAS, No child should suffer injury or death from maltreatment resulting  
2 from regular association with an individual with a known criminal record of child  
3 abuse or neglect; and

4 WHEREAS, A child's regular association with an individual with a history of  
5 child abuse or neglect presents a preventable threat to the safety of Maryland's  
6 children; and

7 WHEREAS, Maryland courts have consistently held that a child can be  
8 adjudicated a child in need of assistance under certain circumstances without waiting  
9 until the child suffers maltreatment before protecting the child; and

10 WHEREAS, A court is unlikely to have the information necessary to protect a  
11 child who is regularly exposed to an individual with a history of harming children  
12 unless a local department of social services petitions the court to find that the child is  
13 in need of assistance; and

14 WHEREAS, The Office of the Attorney General has interpreted the statutory  
15 scheme requiring a local department of social services to investigate abuse and neglect  
16 to be incident-based and therefor not in harmony with the child in need of assistance  
17 statutes; and

18 WHEREAS, To prevent death and injuries to children at substantial risk of  
19 harm, local departments of social services should have an obligation to assess risk and  
20 protect children; now, therefore,

21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
22 MARYLAND, That the Laws of Maryland read as follows:

23 **Article – Family Law**

24 **5-705.2.**

25 **(A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, INCLUDING**  
26 **ANY LAW ON PRIVILEGED COMMUNICATIONS, AND EXCEPT AS PROVIDED IN**  
27 **SUBSECTION (B) OF THIS SECTION, EACH HEALTH PRACTITIONER, POLICE**  
28 **OFFICER, PAROLE AND PROBATION AGENT, JUDGE, EDUCATOR, AND HUMAN**  
29 **SERVICE WORKER, ACTING IN A PROFESSIONAL CAPACITY IN THIS STATE,**  
30 **SHALL NOTIFY THE LOCAL DEPARTMENT OR THE APPROPRIATE LAW**  
31 **ENFORCEMENT AGENCY IF THE INDIVIDUAL HAS REASON TO BELIEVE THAT THE**  
32 **CHILD IS AT SUBSTANTIAL RISK OF ABUSE OR NEGLECT BECAUSE A PARENT,**  
33 **GUARDIAN, OR CAREGIVER OF A CHILD ALLOWS THE CHILD TO RESIDE WITH OR**  
34 **TO ASSOCIATE REGULARLY WITH AN INDIVIDUAL OTHER THAN THE PARENT OR**  
35 **GUARDIAN WHO:**

1           **(1) IS IDENTIFIED IN A CENTRAL REGISTRY UNDER § 5-714 OF**  
2 **THIS SUBTITLE AS AN INDIVIDUAL RESPONSIBLE FOR CHILD SEXUAL ABUSE; OR**

3           **(2) IS REGISTERED ON THE SEXUAL OFFENDER REGISTRY UNDER**  
4 **TITLE 11, SUBTITLE 7 OF THE CRIMINAL PROCEDURE ARTICLE.**

5           **(B) AN INDIVIDUAL IS NOT REQUIRED TO PROVIDE NOTICE UNDER**  
6 **SUBSECTION (A) OF THIS SECTION:**

7           **(1) IN VIOLATION OF THE PRIVILEGE DESCRIBED UNDER § 9-108**  
8 **OF THE COURTS ARTICLE;**

9           **(2) IF THE NOTICE WOULD DISCLOSE MATTER COMMUNICATED IN**  
10 **CONFIDENCE BY A CLIENT TO THE CLIENT'S ATTORNEY OR OTHER**  
11 **INFORMATION RELATING TO THE REPRESENTATION OF THE CLIENT; OR**

12           **(3) IN VIOLATION OF ANY CONSTITUTIONAL RIGHT TO**  
13 **ASSISTANCE OF COUNSEL.**

14           **(C) (1) AN INDIVIDUAL WHO NOTIFIES THE APPROPRIATE**  
15 **AUTHORITY UNDER SUBSECTION (A) OF THIS SECTION SHALL MAKE:**

16                   **(I) AN ORAL REPORT, BY TELEPHONE OR DIRECT**  
17 **COMMUNICATION, AS SOON AS POSSIBLE, TO THE LOCAL DEPARTMENT OR**  
18 **APPROPRIATE LAW ENFORCEMENT AGENCY; AND**

19                   **(II) A WRITTEN REPORT NOT LATER THAN 48 HOURS AFTER**  
20 **THE CONTACT, EXAMINATION, ATTENTION, OR TREATMENT THAT CAUSED THE**  
21 **INDIVIDUAL TO BELIEVE THAT THE CHILD IS AT SUBSTANTIAL RISK OF ABUSE**  
22 **OR NEGLECT BECAUSE THE CHILD IS ALLOWED TO RESIDE WITH OR TO**  
23 **ASSOCIATE REGULARLY WITH AN INDIVIDUAL DESCRIBED IN SUBSECTION (A)**  
24 **OF THIS SECTION.**

25           **(2) IF ACTING AS A STAFF MEMBER OF A HOSPITAL, PUBLIC**  
26 **HEALTH AGENCY, CHILD CARE INSTITUTION, JUVENILE DETENTION CENTER,**  
27 **SCHOOL, OR SIMILAR INSTITUTION, AN INDIVIDUAL WHO NOTIFIES THE**  
28 **APPROPRIATE AUTHORITY UNDER SUBSECTION (A) OF THIS SECTION**  
29 **IMMEDIATELY SHALL NOTIFY AND GIVE ALL THE INFORMATION REQUIRED BY**  
30 **THIS SECTION TO THE HEAD OF THE INSTITUTION OR THE DESIGNEE OF THE**  
31 **HEAD.**

1           **(D) TO THE EXTENT REASONABLY POSSIBLE, AN INDIVIDUAL WHO**  
2 **MAKES A REPORT UNDER THIS SECTION SHALL INCLUDE IN THE REPORT THE**  
3 **FOLLOWING INFORMATION:**

4                   **(1) THE NAME, AGE, AND HOME ADDRESS OF THE CHILD;**

5                   **(2) THE NAME AND HOME ADDRESS OF THE CHILD'S PARENT OR**  
6 **OTHER PERSON WHO IS RESPONSIBLE FOR THE CHILD'S CARE;**

7                   **(3) THE WHEREABOUTS OF THE CHILD;**

8                   **(4) THE NATURE AND EXTENT OF THE SUBSTANTIAL RISK OF**  
9 **ABUSE OR NEGLECT OF THE CHILD, INCLUDING ANY EVIDENCE OR**  
10 **INFORMATION AVAILABLE TO THE REPORTER CONCERNING POSSIBLE**  
11 **PREVIOUS INSTANCES OF ABUSE OR NEGLECT; AND**

12                   **(5) ANY OTHER INFORMATION THAT WOULD HELP TO**  
13 **DETERMINE:**

14                           **(I) THE CAUSE OF THE SUBSTANTIAL RISK OF ABUSE OR**  
15 **NEGLECT; AND**

16                           **(II) THE IDENTITY OF THE INDIVIDUAL DESCRIBED IN**  
17 **SUBSECTION (A)(1) OR (2) OF THIS SECTION.**

18 **5-706.2.**

19           **(A) (1) A LOCAL DEPARTMENT OR A LAW ENFORCEMENT AGENCY**  
20 **MAY RECEIVE A REPORT UNDER § 5-705.2 OF THIS SUBTITLE THAT A CHILD IS**  
21 **AT SUBSTANTIAL RISK OF ABUSE OR NEGLECT.**

22                   **(2) (I) A LOCAL DEPARTMENT THAT RECEIVES A REPORT**  
23 **UNDER § 5-705.2 OF THIS SUBTITLE IMMEDIATELY SHALL NOTIFY THE**  
24 **APPROPRIATE LAW ENFORCEMENT AGENCY AND THE DIVISION OF PAROLE AND**  
25 **PROBATION.**

26                           **(II) A LAW ENFORCEMENT AGENCY THAT RECEIVES A**  
27 **REPORT UNDER § 5-705.2 OF THIS SUBTITLE IMMEDIATELY SHALL NOTIFY THE**  
28 **APPROPRIATE LOCAL DEPARTMENT AND THE DIVISION OF PAROLE AND**  
29 **PROBATION.**

1           **(3) (I) IF A LAW ENFORCEMENT AGENCY RECEIVES THE**  
2 **REPORT, THE LAW ENFORCEMENT AGENCY IMMEDIATELY SHALL REFER THE**  
3 **REPORT TO THE LOCAL DEPARTMENT.**

4           **(II) ON REQUEST OF THE LOCAL DEPARTMENT, THE LAW**  
5 **ENFORCEMENT AGENCY SHALL, WITHIN 48 HOURS, PROVIDE ANY NECESSARY**  
6 **INFORMATION TO CONFIRM OR DENY REGISTRATION OF AN INDIVIDUAL ON THE**  
7 **SEXUAL OFFENDER REGISTRY ALLEGED IN THE REPORT AS DESCRIBED IN §**  
8 **5-705.2(A)(2) OF THIS SUBTITLE.**

9           **(4) THE SECRETARY OF HUMAN RESOURCES SHALL ADOPT**  
10 **REGULATIONS GOVERNING:**

11           **(I) HOW STAFF IN A LOCAL DEPARTMENT SHOULD ELICIT**  
12 **INFORMATION WHEN RECEIVING A REPORT UNDER § 5-705.2 OF THIS SUBTITLE;**  
13 **AND**

14           **(II) THE DEFINITION OF SUBSTANTIAL RISK OF ABUSE OR**  
15 **NEGLECT, AS USED IN § 5-705.2 OF THIS SUBTITLE.**

16           **(B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS**  
17 **SUBSECTION, AFTER CONFIRMING THAT THE ALLEGATIONS IN THE REPORT**  
18 **REGARDING THE INDIVIDUAL'S HISTORY ARE TRUE, THE LOCAL DEPARTMENT**  
19 **SHALL MAKE A THOROUGH INVESTIGATION TO PROTECT THE HEALTH, SAFETY,**  
20 **AND WELFARE OF ANY CHILD OR CHILDREN WHO MAY BE AT SUBSTANTIAL RISK**  
21 **OF ABUSE OR NEGLECT.**

22           **(2) (I) THE LOCAL DEPARTMENT SHALL CONDUCT THE**  
23 **INVESTIGATION JOINTLY WITH AN APPROPRIATE LAW ENFORCEMENT AGENCY.**

24           **(II) THE LOCAL DEPARTMENT AND THE APPROPRIATE LAW**  
25 **ENFORCEMENT AGENCY SHALL ENTER INTO A WRITTEN AGREEMENT THAT**  
26 **SPECIFIES STANDARD OPERATING PROCEDURES FOR AN INVESTIGATION UNDER**  
27 **THIS SECTION.**

28           **(III) THE INVESTIGATION PROCEDURE SHALL:**

29                   **1. INCLUDE APPROPRIATE TECHNIQUES DESIGNED**  
30 **TO:**

31                   **A. EXPEDITE THE VALIDATION OF REPORTS;**

1                   **B.    DECREASE THE POTENTIAL FOR PHYSICAL HARM**  
2 **TO THE CHILD; AND**

3                   **C.    DECREASE ANY TRAUMA EXPERIENCED BY THE**  
4 **CHILD IN THE INVESTIGATION; AND**

5                   **2.    ESTABLISH AN ONGOING TRAINING PROGRAM FOR**  
6 **PERSONNEL INVOLVED IN THE INVESTIGATION.**

7                   **(3)   IF A SUBSEQUENT REPORT IS RECEIVED REGARDING AN**  
8 **INDIVIDUAL THAT ALLEGES SUBSTANTIALLY THE SAME FACTS AS A REPORT**  
9 **THAT THE LOCAL DEPARTMENT PREVIOUSLY HAS INVESTIGATED, THE LOCAL**  
10 **DEPARTMENT MAY DECLINE TO MAKE AN INVESTIGATION OF THE SUBSEQUENT**  
11 **REPORT.**

12                  **(C)   WITHIN 5 DAYS AFTER RECEIVING THE REPORT, THE LOCAL**  
13 **DEPARTMENT OR THE APPROPRIATE LAW ENFORCEMENT AGENCY SHALL:**

14                  **(1)   SEE THE CHILD IN PERSON;**

15                  **(2)   ATTEMPT TO HAVE AN ON-SITE INTERVIEW WITH THE CHILD'S**  
16 **CAREGIVER AND THE INDIVIDUAL DESCRIBED IN § 5-705.2(A)(1) OR (2) OF THIS**  
17 **SUBTITLE;**

18                  **(3)   DETERMINE THE SAFETY OF AND LEVEL OF RISK TO THE**  
19 **CHILD AND TO OTHER CHILDREN IN THE HOUSEHOLD; AND**

20                  **(4)   DETERMINE THE SAFETY OF AND LEVEL OF RISK TO OTHER**  
21 **CHILDREN IN THE CARE OR CUSTODY OF THE INDIVIDUAL DESCRIBED IN §**  
22 **5-705.2(A)(1) OR (2) OF THIS SUBTITLE.**

23                  **(D)   TO THE EXTENT POSSIBLE, AN INVESTIGATION UNDER THIS**  
24 **SECTION SHALL BE COMPLETED WITHIN 30 DAYS AFTER RECEIPT OF THE**  
25 **REPORT.**

26                  **(E)   IF, AFTER THE INVESTIGATION IS COMPLETED, THE LOCAL**  
27 **DEPARTMENT DETERMINES THAT THE CHILD IS NOT SAFE OR IS AT**  
28 **SUBSTANTIAL RISK OF ABUSE OR NEGLECT, THE LOCAL DEPARTMENT SHALL:**

29                  **(1)   OFFER SERVICES TO THE FAMILY;**

30                  **(2)   PROVIDE THE CHILD'S CAREGIVER WITH INFORMATION ON**  
31 **CHILD SEXUAL ABUSE; AND**

1           **(3) IMMEDIATELY DECIDE WHETHER TO FILE A PETITION**  
2 **ALLEGING THAT THE CHILD IS IN NEED OF ASSISTANCE.**

3           **(F) WITHIN 30 DAYS AFTER THE COMPLETION OF AN INVESTIGATION**  
4 **UNDER THIS SECTION, THE LOCAL DEPARTMENT SHALL NOTIFY IN WRITING THE**  
5 **CHILD'S CAREGIVER, THE INDIVIDUAL DESCRIBED IN § 5-705.2(A)(1) OR (2) OF**  
6 **THIS SUBTITLE, LOCAL LAW ENFORCEMENT, AND THE DIVISION OF PAROLE**  
7 **AND PROBATION OF THE LOCAL DEPARTMENT'S DETERMINATION ON THE**  
8 **SAFETY OF AND LEVEL OF RISK TO THE CHILD.**

9 5-707.

10           (b) The local department shall expunge a report of suspected abuse or  
11 neglect **OR OF SUBSTANTIAL RISK OF ABUSE OR NEGLECT** and all assessments and  
12 investigative findings:

13           (1) within 5 years after the date of referral if the investigation under §  
14 **5-706 OR § 5-706.2** of this subtitle concludes that the report is unsubstantiated, and  
15 no further reports of abuse or neglect **OR SUBSTANTIAL RISK OF ABUSE OR**  
16 **NEGLECT** are received during the 5 years; and

17           (2) within 120 days after the date of referral if the report is ruled out,  
18 and no further reports of abuse or neglect **OR SUBSTANTIAL RISK OF ABUSE OR**  
19 **NEGLECT** are received during the 120 days.

20 5-708.

21           Any person who makes or participates in making a report of abuse or neglect  
22 under § 5-704, § 5-705, or § 5-705.1 of this subtitle **OR A REPORT OF SUBSTANTIAL**  
23 **RISK OF ABUSE OR NEGLECT UNDER § 5-705.2 OF THIS SUBTITLE** or participates  
24 in an investigation or a resulting judicial proceeding shall have the immunity  
25 described under § 5-620 of the Courts and Judicial Proceedings Article from civil  
26 liability or criminal penalty.

27           **SECTION 2. AND BE IT FURTHER ENACTED,** That this Act shall take effect  
28 October 1, 2010.